

Appl. No. 10/533,398  
Dated: September 8, 2006  
Reply to Office action of August 8, 2006

### **REMARKS**

This amendment is in response to the Office action mailed on August 8, 2006. Claims 1 - 43 were originally filed in the application. Claims 35-38 are canceled without prejudice or disclaimer. Claims 1-21 and 31-43 are withdrawn. Claims 22-27 and 29 have been amended and Claims 44-47 are added. Claims 1-34 and 39-47 are pending in the application.

On page 2 of the Action, restriction has been required between one of the following inventions.

- I. Claims 22-34, drawn to clip appliers, classified in class 606, subclass 142.
- II. Claims 1-21 and 35-43, drawn to clips, classified in class 606, subclass 157.

The Action also indicates that Invention I contains claims directed to the following patentably distinct species of the claimed invention:

<u>Species</u>	<u>Figure(s)</u>	<u>Claims</u>
A	12A-12D	22-30
B	20	31-34

The Action further indicates on page 3 that Invention II contains claims directed to the following patentably distinct species of the claimed invention:

<u>Species</u>	<u>Figure(s)</u>	<u>Claims</u>
A	6	1-13
B	10	14-21
C	20C	35-38
D	23	39-41
E	24	42-43

The action requires under 35 U.S.C. 121 an election of a single disclosed species to which the claims shall be restricted if no generic claim is finally held to be allowable.

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In response to the election/restriction requirement, Applicant provisionally elects Invention I, Species A, FIG. 12A-12D. As such, claims 22-30 readable thereon, are elected.

Applicant also respectfully traverses the restriction requirement in that the Invention I, Species A is further shown in other figures beyond figures 12A-12D. For example, figures 15A-18 also describe Invention I, Species A. Also, the number of species, two, for Invention I also does not appear to be excessive as provided by 37 CFR 1.141.

New claims 44-47 also describe various aspects of the invention. For example, claim 44 provides that the elongate shaft is sized to fit through a surgical trocar port. Claim 45 provides that one of the jaws has a first slot arranged to operably receive the first tissue engaging member without the securing member and another of the jaws has a second slot arranged to operably receive the second tissue engaging member without the securing member. Claim 46 further provides that the first slot is arranged to operably receive a first portion of the securing member and the second slot is arranged to operably receive a second portion of the securing member, the first and second portions of the securing member being different. Claim 47 provides that one of the jaws has a first slot sized and arranged to simultaneously hold the first tissue engaging member and a first portion of the securing member and another of the jaws has a second slot arranged to simultaneously hold the second tissue engaging member and a second portion of the securing member.

Applicant also notes that as provided in claims 44-47, elongate shaft 605, jaws 615, 620 and sliding member 625 are shown for example in Figures 12A-B of the elected invention and species and further in the written description on page 12, line 9 to page 13, line 23. Accordingly, new claims 44-47 are believed readable on the elected invention and species. If, however, based on this amendment the Examiner believes a different election/restriction requirement is required and/or selection of claims, Applicant

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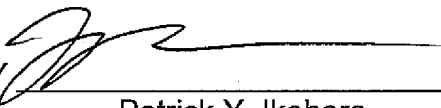
reserves the right to change/traverse the election of species and claims directed thereto.

In view of the foregoing remarks, it is respectfully submitted that this application is in condition for allowance. Accordingly, reconsideration of the application and allowance of claims 1-34 and 39-47 are respectfully requested. Applicant also respectfully submits that the features, e.g., elongate shaft 605, jaws 615, 620, and sliding member 625, depicted in figures 12A-18 are merely exemplary and/or illustrative and does not disavow any claim scope or define any elements or terms in the claims in such a way other than as recited or provided in the claims and their equivalents. Likewise, any characterization of the features, e.g., elongate shaft 605, jaws 615, 620, and sliding member 625, depicted in figures 12A-18 in relation to the claims are merely exemplary and/or illustrative and thus Applicant does not disavow any claim scope or specially define any elements or terms in the claims in such a way other than as recited or provided in the claims and their equivalents. If the Examiner should have any remaining questions or objections, a telephone interview to discuss and resolve these issues is respectfully requested.

Applicant respectfully requests reconsideration of the application and allowance of the pending claims. If the Examiner believes that a telephone conference with Applicant's attorney might expedite prosecution of the application, the Examiner is invited to call at the telephone number indicated below.

Sincerely,

APPLIED MEDICAL RESOURCES

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